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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/409,330	09/30/1999	JASON T. CASSEZZA	INTL-0268-US	5219

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EXAMINER

LUU, SY D

ART UNIT

PAPER NUMBER

2174

DATE MAILED: 09/01/2004

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/409,330

Applicant(s)

CASSEZZA, JASON T.

Examiner

Sy D Luu

Art Unit

2174

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/28/04, 9/3/02 and prior.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-26 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. In view of the Decision On Appeal sent on 4/28/04, PROSECUTION IS HEREBY REOPENED. Upon further updated search and consideration, a new ground of rejection is made in view of Mayhew et al. as set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

2. Claims 1-26 are pending in this application. Claims 1, 10 and 19 are independent claims. This action is made Non-Final.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 2174

4. Claims 1-3, 7, 9-12, 16, 18 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Davidson (US # 5,778,077).

As per claim 1, Davidson teaches a method of controlling volume levels in a processor-based system comprising:

obtaining an indicia of the volume level of audio information received by said system (fig. 5; col. 5, lines 1-5; *volume-adjusting device 5 obtains the indicia using microphone 55*);

comparing the indicia to a preset level, and automatically adjusting the volume level towards said preset level (col. 5, lines 16-30; *adjusting the volume up/down towards the preset lower/upper limits when the level exceeds the limits*).

As per claim 2, Davidson teaches the step of comparing to include comparing the indicia to a high volume preset level and a low volume preset level and the step of adjusting to include adjusting the volume level to a volume level between the high and low preset levels (col. 5, lines 16-30; *adjusting the volume up/down when level exceeds lower/upper limit respectively and thus keeping the volume within the preset levels*).

As per claim 3, Davidson teaches the step of receiving audio information from a remote control unit and using the audio information received at said remote control unit as said indicia (fig. 2, microphone 55; col. 3, lines 7-10).

As per claim 7, Davidson teaches the step adjusting to include adjusting the volume level to the preset level when the volume would otherwise exceed the preset level (col. 4, lines 57-61).

Art Unit: 2174

As per claim 9, Davidson teaches the step of receiving said indicia at a location remote from said system (col. 2, lines 64-67; *the volume adjusting device could be located separated from the system*).

Claims 10-12, 16 and 18 are similar in scope to claims 1-3, 7 and 9 respectively, and therefore are rejected under similar rationale.

Claim 25 is similar in scope to claim 2, and therefore is rejected under similar rationale.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4-6, 8, 13-15, 17-18 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson (US # 5,778,077) in view of Lee (US # 5,191,620).

As per claim 4, although Davidson disclose the step of allowing a user to select the preset levels (col. 4, lines 58-61), Davidson does not explicitly indicate the selection is to done via a graphical user interface. Lee teaches a method for controlling volume level of sound for a display, wherein a GUI is provided to allow a user to input the desired volume levels (figs. 3A-3A'; col. 2, lines 32-34). It would have been obvious to an artisan at the time of the invention to combine Lee's teaching with the system of

Art Unit: 2174

Davidson and Joseph in order to provide user with a visual means for making selection of preset volume levels.

As per claim 5, Lee teaches the step of automatically generating a plurality of sounds of increasing volume and receiving a user selection of a desired volume level (col. 2, lines 37-38).

As per claim 6, Lee teaches the step of correlating the time period when a user selection was received to the volume of the sound being generated at the time the user selection was received (fig. 2; *step 19*) and recording that volume level as the preset level (fig. 19; steps 14 and 17; fig. 2).

As per claim 8, Davidson does not explicitly step of allowing the user to set the preset level through the remote control unit. Lee teaches a method for controlling volume level of sound for a display, wherein a user could set the volume level through the remote control unit (fig. 1; transmitter 1). It would have been obvious to an artisan at the time of the invention to combine Lee's teaching with the Davidson' system in order to provide user with a convenient means for setting preset volume levels.

Claims 13-15 and 17 are similar in scope to claims 4-6 and 8 respectively, and therefore are rejected under similar rationale

As per claim 18, Lee teaches producing sounds of decreasing volume to monitor for a user input command indicative that the user has selected the volume level of one of said sounds as said preset level (col. 2, lines 48-52).

Claim 23 is similar in scope to claim 4, and therefore is rejected under similar rationale.

Art Unit: 2174

7. Claims 19-22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson (US # 5,778,077) in view of Joseph et al. ("Joseph", US # 5,363,147).

As per claim 19, Davidson teaches a processor-based system comprising: control sound volume generated by a sound generating circuit in accordance with a preset-set volume limit (fig. 5; device 210; col. 5, lines 16-30; *adjusting the volume up/down when level exceeds lower/upper limit respectively and thus keeping the volume within the preset levels*). Davidson does not explicitly disclose the device 210 to include the components such as a processor, a sound generating circuitry as recited, software to control sound generated by said circuitry. However, it is noted that these components are well known in the art. For instance, Joseph teaches an automatic volume control system similar to the system of Davidson, wherein the sound generating circuit (fig. 1; *sound reproducing circuit 5*) and the automatic volume control means (fig. 1; *volume control 6*) are inclusive within the device (*television*) for which volume is to be controlled. Furthermore, Official Notice is taken that the use of software stored on a computer storage medium to control generated sound is well known in the art. It would have been obvious to an artisan at the time of the invention to include Joseph's components and the sound control software with Davidson's system in order to allow the system with means for effectively generating/controlling audio signals.

As per claim 20, Davidson teaches a transceiver (fig. 1, *IR transmitter 17*) and a remote control unit (fig. 1, *device 5*), said remote control unit communicating with said processor through said transceiver (col. 5, lines 1-5).

As per claim 21, Davidson teaches said remote control unit to include a microphone for receiving sounds generated by said sound generating circuit, said

Art Unit: 2174

microphone coupled to a controller in said remote control unit, said controller sending signals to said processor indicative of the sound levels received from said processor (col. 5, lines 1-30) .

As per claim 22, Davidson teaches said remote control unit and said transceiver communicate through infrared signals (col. 5, lines 4-6).

As per claim 26, Davidson teaches increasing the volume level when the sound produced by said circuit is at a level proximate to said lower volume limit and to reduce the sound when the sound level is proximate to said higher volume limit (col. 4, lines 58-67).

8. Claims 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson (US # 5,778,077) and Joseph et al. ("Joseph", US # 5,363,147) in view of Lee (US # 5,191,620).

As per claim 24, the system of Davidson and Joseph does not teach the step of generating time-spaced tones and selecting a tone volume. Lee teaches a method for controlling volume level of sound for a display, wherein time-spaced tones and tone volume selection are provided (col. 3, lines 1-10). It would have been obvious to an artisan at the time of the invention to combine Lee's teaching with the system of Davidson and Joseph in order to provide user with a visual means for tone feedback and for facilitating the selection of the desired volume level.

Art Unit: 2174

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Konstantinou et al. (US 6,584,201 B1) teaches a remote automatic volume control method.

Zawilski (US 6,069,567) teaches an audio-recording remote control method.

Saadoun (US 5,631,714) teaches a system for automatically adapting the mean sound level of a television receiver.

Sansur (US 6,169,807 B1) teaches a remote automatic audio level control device.

Inquires

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sy Luu whose telephone number is (703) 305-0409. The examiner can normally be reached on Monday - Thursday from 7:00 am to 4:30 pm (EST). The examiner can also be reached on alternate Friday.

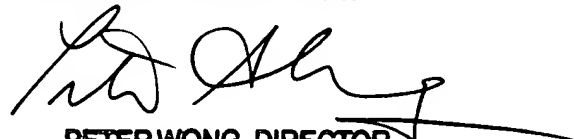
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid, can be reached on (703) 308-0640.

The fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



**SY D. LUU
PRIMARY EXAMINER**



**PETER WONG, DIRECTOR
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